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Supreme Court, U.S.
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No. 99-1331

In The

Supreme Court of the United States

JAMES F. LEWIS,

Petitioner,

v.

LEWIS & CLARK MARINE, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented by this case is:

Did the District Court abuse its discretion by staying Respondent's prior filed federal court action for exoneration from and limitation of liability under 46 U.S.C. § 181, *et seq.*, and dissolving the injunction imposed against Petitioner's state court Jones Act case, when Petitioner was not seeking a jury trial in the state court case and there was no conflict between Respondent's right to exoneration in the federal court and this remedy saved to Petitioner under the saving to suitors clause, 28 U.S.C. § 1333(1)?

RULE 29.6 LISTING

Petitioner has no parent or subsidiary companies to be listed pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
RULE 29.6 LISTING	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	2
CONCLUSION	9

TABLE OF AUTHORITIES

Page

CASES

Beiswenger Enterprises Corp. v. Carletta, 86 F.3d 1032 (11th Cir. 1996) 4, 6, 7

Complaint of Consolidation Coal Co., 123 F.3d 126 (3rd Cir. 1997) 7, 8

Complaint of Port Arthur Towing Co. on Behalf of M/V Miss Carolyn, 42 F.3d 312 (5th Cir. 1995) 6, 7

Curtis Bay Towing Co. v. Tug Kevin Moran, Inc., 159 F.2d 273 (2nd Cir. 1947) 5

Fecht v. Makowski, 406 F.2d 721 (5th Cir. 1969) 6

Gorman v. Cerasia, 2 F.3d 519 (3rd Cir. 1993) 4

Henderson v. United States, 517 U.S. 654 (1996) 6

In re Muer, 146 F.3d 410 (6th Cir. 1998) 4

Kreta Shipping, S.A. v. Preussag Intern. Steel Corp., 192 F.3d 41 (2nd Cir. 1999) 4, 5

Lake Tankers Corp. v. Henn, 354 U.S. 147 (1957) 3, 4, 8

Langnes v. Green, 282 U.S. 531 (1931) 3, 4

Lewis & Clark Marine, Inc. v. Lewis, 196 F.3d 900 (8th Cir. 1999) 2, 4

Linton v. Great Lakes Dredge & Dock Co., 964 F.2d 1480 (5th Cir. 1992) 5

Magnolia Marine Transport Co. v. Laplace Towing Corp., 964 F.2d 1571 (5th Cir. 1992) 6

Matter of Hechinger, 890 F.2d 202 (9th Cir. 1989) 7

Newton v. Shipman, 718 F.2d 959 (9th Cir. 1983) 4

TABLE OF AUTHORITIES – Continued

Page

Odeco Oil and Gas Co., Drilling Div. v. Bonnette, 74 F.3d 671 (5th Cir. 1996) 4, 8

Providence & N. Y. S. S. Co. v. Hill Mfg. Co., 109 U.S. 578 (1883) 7

Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109 (1924) 4, 5, 6

S & E Shipping Corp. v. Chesapeake & Ohio Ry. Co., 678 F.2d 636 (6th Cir. 1982) 6

The Helen L, 109 F.2d 884 (9th Cir. 1940) 6

The 84-H, 296 F. 427 (2nd Cir. 1923) 7

STATUTES

28 U.S.C. § 1333(1) 3

28 U.S.C. § 2072(b) 6

46 U.S.C. § 183 7

STATEMENT OF THE CASE

Petitioner's Statement of the Case omits and misstates certain facts that are critical to this Court's analysis of the Question Presented.

First, Petitioner fails to describe fully the relief sought by Respondent in the District Court. Respondent's Complaint filed before the District Court first sought exoneration from liability and requested limitation of liability only in the alternative. (Tab A, A3-4)

Second, Petitioner mischaracterizes and oversimplifies the basis for Respondent's opposition to the Motion to Dissolve the Restraining Order. Respondent did not merely object to the Motion because Petitioner had not requested a jury trial in his state court Jones Act case. Rather, Respondent asserted that because Petitioner waived his right to a jury trial in the state court, no conflict exists between Respondent's right to exoneration from and limitation of liability in federal court and Petitioner's right under the saving to suitors clause to a jury trial in state court. (Tab Q, A61-65) Absent such a conflict, the "adequate fund" and "single claimant" exceptions to the federal court's exclusive jurisdiction over the limitation proceeding do not apply. (Tab Q, A61-65)

Petitioner also misstates the holding of the Eighth Circuit in this case. The Eighth Circuit did not, in the words of Petitioner, find that "the limitation plaintiff's right to have liability and damage issues determined by the federal court was . . . superior to the claimant's right to have his case heard in state court." (Petition, p. 8) Rather, the Eighth Circuit's decision to reverse the order

dissolving the injunction was based on three key holdings:

(1) the adjudication of the shipowner's right to exoneration was properly within the exclusive jurisdiction of the federal admiralty court, even though Petitioner stipulated as to the adequacy of the limitation fund;

(2) there was no conflict between the Limitation of Liability Act and the "saving to suitors" clause because Petitioner had waived his right to a jury trial in state court and thus had not sought any saved remedies; and

(3) absent such a conflict, there was no basis for applying the exceptions to the federal court's exclusive jurisdiction over actions for exoneration from and limitation of liability.

Lewis & Clark Marine, Inc. v. Lewis, 196 F.3d 900 (8th Cir. 1999).

REASONS FOR DENYING THE PETITION

Petitioner attempts to portray the ruling of the Eighth Circuit Court of Appeals as an aberration and departure from uniformity of maritime law. In fact, the opposite is true. The Eighth Circuit's ruling is a straightforward application of traditional and unremarkable principles of maritime law to a non-traditional situation.

In the District Court, Petitioner sought relief from the stay imposed in the limitation proceeding so that he could pursue a non-jury Jones Act case in Illinois state court. Contrary to virtually every common law state, the

Illinois Appellate Court currently will not allow a Jones Act defendant a trial by jury, even though that right is protected by the Illinois Constitution. Citing boilerplate dicta without properly analyzing the key distinction presented by this case, the District Court lifted the stay and allowed Petitioner to go forward with his Illinois state non-jury Jones Act case. The Eighth Circuit reversed, citing the unremarkable maxim that the saving to suitors clause, 28 U.S.C. § 1333(1), preserves a choice of remedies, not of a particular fora. Since the remedy sought by Petitioner was available in the limitation proceeding, there was no reason to lift the stay. Petitioner's attempt to demonstrate a conflict among the circuits is nothing more than dissatisfaction with the Eighth Circuit's application of traditional maritime principles to Petitioner's non-traditional attempt to deny Respondent a jury trial in a state court Jones Act case.

The Eighth Circuit's opinion is not, as Petitioner would have this Court believe, a departure from the analytic framework established in *Langnes v. Green*, 282 U.S. 531 (1931), and *Lake Tankers Corp. v. Henn*, 354 U.S. 147 (1957). To the contrary, the Eighth Circuit's decision flows directly from the reasoning of *Langnes*, *Lake Tankers* and Circuit Court cases establishing that exclusive federal jurisdiction over limitation of liability actions should not be disturbed absent a serious conflict with the saving to suitors clause, here the deprivation of a claimant's right to a jury trial. The Eighth Circuit applied this same logic when it determined that there was no justification for conceding exclusive federal jurisdiction because Petitioner had not asserted any remedy saved to him under the saving to suitor clause. Consequently, the opinion is

consistent with the decisions of this Court and the Federal Circuit Courts and there is no threat to maritime uniformity or any basis under Rule 10 of the Supreme Court Rules to grant the Petition.

First, the Eighth Circuit did not ignore or reject the "single claimant" exception (*Langnes*) and "adequate fund" exception (*Lake Tankers*) to exclusive federal jurisdiction over limitation proceedings. The Eighth Circuit instead found the exceptions inapplicable because there was no "conflict between the Limitation Act and the 'saving to suitors' clause. . . . " *Lewis & Clark Marine, Inc. v. Lewis*, 196 F.3d 900, 910 (8th Cir. 1999). This holding is consistent with decisions of the Third, Fifth, Sixth, Ninth and Eleventh Circuit Courts, which have all recognized that the purpose of the "adequate fund" and "single claimant" exceptions is to reconcile the tension between the Limitation Act and the saving to suitors clause, specifically due to the unavailability of jury trials in limitation cases. *See Gorman v. Cerasia*, 2 F.3d 519, 524 (3rd Cir. 1993); *Odeco Oil and Gas Co., Drilling Div. v. Bonnette*, 74 F.3d 671, 674 (5th Cir. 1996); *In re Muer*, 146 F.3d 410, 417 (6th Cir. 1998); *Newton v. Shipman*, 718 F.2d 959, 962 (9th Cir. 1983); *Beiswenger Enterprises Corp. v. Carletta*, 86 F.3d 1032, 1037 (11th Cir. 1996).

There is no conflict between the Eighth Circuit's opinion and the various cases cited by Petitioner. Without exception, Petitioner relies upon boilerplate "holdings," whose application to this case are not borne out by even casual scrutiny of the facts. For instance, the Eighth Circuit's opinion does not conflict with this Court's holding in *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109 (1924) and the decisions of the Second Circuit in *Kreta Shipping,*

S.A. v. Preussag Intern. Steel Corp., 192 F.3d 41 (2nd Cir. 1999), and *Curtis Bay Towing Co. v. Tug Kevin Moran, Inc.*, 159 F.2d 273 (2nd Cir. 1947), as these cases do not, as Petitioner claims, hold that a non-jury trial is a "saved remedy" under the saving to suitors clause. In *Red Cross Lines*, the Court determined that enforcement of a maritime arbitration clause pursuant to a state statute was a saved remedy under the saving to suitors clause. *Red Cross Lines*, 264 U.S. at 124. Arbitration obviously was not available in the limitation proceeding. Likewise, the Second Circuit in *Kreta* specifically declined to decide the issue of whether the non-common law action that the insurer sought to institute abroad was saved under the saving to suitors clause. *Kreta*, 192 F.3d at 49 n. 7. In *Curtis Bay*, the claimants were suing in admiralty and, therefore, the Second Circuit expressly held that the injunction did not deny them "the right to a common-law remedy" within the meaning of the saving to suitors clause. *Curtis Bay*, 159 F.2d at 276. Clearly, the cases cited in the Petition do not address the issue that was before the Eighth Circuit and in no way conflict with the Eighth Circuit's holding that Petitioner's desire for a state court bench trial did not constitute a saved remedy.

Furthermore, there is no conflict with the Fifth Circuit's decision in *Linton v. Great Lakes Dredge & Dock Co.*, 964 F.2d 1480 (5th Cir. 1992), as that case did not involve a limitation action nor an independent jurisdictional basis on which the federal court could hear the case. Moreover, the claimant in *Linton* had elected to proceed without a jury in state court under a Louisiana state statute. As this Court recognized in *Red Cross Lines*, "judicial remedies

conferred by statute" are saved remedies within the saving to suitors clause. *Red Cross Lines*, 264 U.S. at 124. Because there is no Illinois state statute that granted Petitioner the choice of a non-jury trial, *Linton* is inapposite.

The remaining cases cited by Petitioner likewise do not conflict with the Eighth Circuit's opinion. In fact, the cases either support the holding of the Eighth Circuit, (*Complaint of Port Arthur Towing Co. on Behalf of M/V Miss Carolyn*, 42 F.3d 312, 315 (5th Cir. 1995); *Magnolia Marine Transport Co. v. Laplace Towing Corp.*, 964 F.2d 1571, 1575 (5th Cir. 1992); *S & E Shipping Corp. v. Chesapeake & Ohio Ry. Co.*, 678 F.2d 636, 642 (6th Cir. 1982); *Beiswenger*, 86 F.3d at 1037 (all recognizing that the conflict between the saving to suitors clause and the Limitation Act arises because a jury trial is unavailable in a federal court limitation proceeding)), or are simply inapposite (*Fecht v. Makowski*, 406 F.2d 721, 722-23 (5th Cir. 1969) (a case in which limitation was not possible because the boat owner was also the operator and, therefore, any negligence had to be within the shipowner's privity and knowledge); *The Helen L*, 109 F.2d 884 (9th Cir. 1940) (a case that does not specify whether or not a jury trial was sought in state court)).

Finally, there is no conflict between the Eighth Circuit's opinion and either the Rules Enabling Act, 28 U.S.C. § 2072(b), or *Henderson v. United States*, 517 U.S. 654 (1996). Petitioner's argument on this point is based upon the faulty assumption that Supplemental Admiralty & Maritime Claims Rule F is the sole source of a shipowner's right to exoneration in federal court. (Petition, p. 10) As the Eighth Circuit correctly held, exoneration is

not a mere procedural adjunct to limitation, but a substantive right involved in limitation proceedings. This point is first established by the language of the limitation statute, 46 U.S.C. § 183, which provides that the liability of the vessel owner "shall not . . . exceed" the value of the vessel and pending freight. The statute does not assume liability in the first instance and there is no provision calling for a determination of liability separate from limitation. Thus, the statutory procedures necessarily require a determination of liability first before the issue of limitation can be reached.

This Court reached the same conclusion in *Providence & N.Y. S. S. Co. v. Hill Mfg. Co.*, 109 U.S. 578 (1883), which held that:

> The questions to be settled by the statutory [limitation] proceedings being – First, whether the ship or its owners are liable at all, (if that point is contested and has not been decided;) and, secondly, if liable, whether the owners are entitled to a limitation of liability, – must necessarily be decided by the district court having jurisdiction of the case; and to render its decision conclusive, it must have entire control of the subject to the exclusion of other courts and jurisdictions.

Id. at 595. The Second, Third, Fifth, Ninth and Eleventh Circuits have all echoed this holding. *See The 84-H*, 296 F. 427, 431-32 (2nd Cir. 1923); *Complaint of Consolidation Coal Co.*, 123 F.3d 126, 132 (3rd Cir. 1997); *Complaint of Port Arthur Towing Co.*, 42 F.3d at 317; *Matter of Hechinger*, 890 F.2d 202, 207 (9th Cir. 1989); *Beiswenger*, 86 F.3d at 1036 (all recognizing that a limitation proceeding is a two-step

process in which the court must first determine whether liability exists).

As this Court succinctly stated in *Lake Tankers*, "the respondent must not be thwarted in her attempt to employ her common-law remedy in the state court **where she may obtain trial by jury.**" *Lake Tankers*, 354 U.S. at 153 (emphasis added); *see also, Consolidation Coal*, 123 F.3d at 132; *Odeco Oil & Gas*, 74 F.3d at 674; *Newton*, 718 F.2d at 962 (all recognizing that the saving to suitors favors jury trials and thus conflicts with federal limitation actions in which jury trials are unavailable). The Eighth Circuit's decision is based on this basic unremarkable principle, *i.e.* that no conflict exists between the right to exoneration and limitation in federal court and the saving to suitors clause when the claimant has not asserted a "saved remedy," specifically the right to a jury trial in state court.

Because Petitioner waived his right to trial by jury in the state court Jones Act case, the Eighth Circuit correctly concluded that he was not being deprived of any remedy within the meaning of the saving clause he does not otherwise have in the limitation action. Indeed, the remedy sought in both the state court case and the federal limitation proceeding is the same – a bench trial without a jury. Under these circumstances, there was no basis for the District Court to apply either the "adequate fund" or "single claimant" exception and concede exclusive federal jurisdiction over the exoneration and limitation action.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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